

## CIVIL COVER SHEET

JS 44 - CAND (Rev. 11/04)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

## I. (a) PLAINTIFFS

THERESA CLEMONDS, ET AL.

## DEFENDANTS

ORTHO-MCNEIL PHARMACEUTICAL, INC., ET AL.

EDL  
ADR(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Rochester, NY  
(EXCEPT IN U.S. PLAINTIFF CASES)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Raritan, NJ  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

## (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

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## II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding  
☒ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from Another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

| CONTRACT  | TORTS                                 | FORFEITURE/PENALTY                              | BANKRUPTCY                            | OTHER STATUTES  |
|---|---------------------------------------|---|---------------------------------------|---|
| 110 Insurance   | PERSONAL INJURY                       | 610 Agriculture                                 | 422 Appeal 28 USC 158                 | 400 State Reapportionment                                     |
| 120 Marine  | 310 Airplane                          | 620 Other Food & Drug                           | 423 Withdrawal 28 USC 157             | 410 Antitrust   |
| 130 Miller Act  | 315 Airplane Product Liability        | 625 Drug Related Seizure of Property 21 USC 881 | PROPERTY RIGHTS                       | 430 Banks and Banking   |
| 140 Negotiable Instrument                               | 320 Assault Libel & Slander           | 630 Liquor Laws                                 | 820 Copyrights                        | 450 Commerce/ICC Rates/etc.                                   |
| 150 Recovery of Overpayment & Enforcement of Judgment   | 330 Federal Employers Liability       | 640 RR & Truck                                  | 830 Patent                            | 460 Deportation   |
| 151 Medicare Act  | 340 Marine                            | 650 Airline Regs                                | 840 Trademark                         | 470 Racketeer Influenced and Corrupt Organizations            |
| 152 Recovery of Defaulted Student Loans (Excl Veterans) | 345 Marine Product Liability          | 660 Occupational Safety/Health                  | SOCIAL SECURITY                       | 480 Consumer Credit   |
| 153 Recovery of Overpayment of Veteran's Benefits       | 350 Motor Vehicle                     | 690 Other                                       | 861 HIA (1395ff)                      | 490 Cable/Satellite TV  |
| 160 Stockholders Suits                                  | 355 Motor Vehicle Product Liability   | LABOR   | 862 Black Lung (923)                  | 810 Selective Service   |
| 190 Other Contract                                      | 360 Other Personal Injury             | 710 Fair Labor Standards Act                    | 863 DIWC/DIWW (405(g))                | 850 Securities/Commodities/Exchange                           |
| 195 Contract Product Liability                          | 365 Property Damage Product Liability | 720 Labor/Mgmt Relations                        | 864 SSID Title XVI                    | 875 Customer Challenge 12 USC 3410                            |
| 196 Franchise   |                                       | 730 Labor/Mgmt Reporting & Disclosure Act       | 865 RSI (405(g))                      | 891 Agricultural Acts   |
| REAL PROPERTY   | CIVIL RIGHTS                          | 740 Railway Labor Act                           | FEDERAL TAX SUITS                     | 892 Economic Stabilization Act                                |
| 210 Land Condemnation                                   | 441 Voting                            | 790 Other Labor Litigation                      | 870 Taxes (US Plaintiff or Defendant) | 893 Environmental Matters                                     |
| 220 Foreclosure   | 442 Employment                        | 791 Empl. Ret. Inc. Security Act                | 871 IRS - Third Party 26 USC 7609     | 894 Energy Allocation Act                                     |
| 230 Rent Lease & Ejectment                              | 443 Housing                           |   |                                       | 895 Freedom of Information Act                                |
| 240 Torts to Land                                       | 444 Welfare                           |   |                                       | 900 Appeal of Fee Determination Under Equal Access to Justice |
| 245 Tort Product Liability                              | 440 Other Civil Rights                |   |                                       | 950 Constitutionality of State Statutes                       |
| 290 All Other Real Property                             | 445 Amer w/ disab - Empl              |   |                                       | 890 Other Statutory Actions                                   |
|   | 446 Amer w/ disab - Other             |   |                                       |   |
|   | PRISONER PETITIONS                    |   |                                       |   |
|   | 510 Motion to Vacate Sentence         |   |                                       |   |
|   | Habeas Corpus:                        |   |                                       |   |
|   | 530 General                           |   |                                       |   |
|   | 535 Death Penalty                     |   |                                       |   |
|   | 540 Mandamus & Other                  |   |                                       |   |
|   | 550 Civil Rights                      |   |                                       |   |
|   | 555 Prison Condition                  |   |                                       |   |

## VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

28 U.S.C. Section 1332

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION DEMAND \$ 75,000+  
UNDER F.R.C.P. 23 Excluding Interest and Costs.

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ YES ☐ NO

## VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE  
"NOTICE OF RELATED CASE."

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)  
(PLACE AN "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE

DATE February 26, 2008

SIGNATURE OF ATTORNEY OF RECORD Brenda N. Buonaiuto

B. Buonaiuto

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ORTHO-MCNEIL PHARMACEUTICAL, INC., now  
known as ORTHO-McNEIL-JANSSEN  
PHARMACEUTICALS, INC.,  
and MCKESSON CORPORATION

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

THERESA CLEMONDS, an individual;  
VALERI HAMILTON, an individual;  
CLAUDIA MATAMOROS, an individual;  
LATASHA PRENTICE, an individual;  
MARGARET RAINEY, an individual;  
FELECIA SOUTHWELL, an individual;  
HALEY VANSANDT, an individual;

Plaintiffs,

v.

ORTHO-MCNEIL PHARMACEUTICAL,  
INC., a Delaware Corporation;  
MCKESSON CORP. and DOES 1-500,  
inclusive,

Defendants.

Case 1:08-cv-01167-EDL  
**CV 08 1167**  
**NOTICE OF REMOVAL AND  
REMOVAL OF ACTION UNDER 28  
U.S.C. § 1441(b) [DIVERSITY]**

**TO THE CLERK OF THE COURT:**

Defendant Ortho-McNeil Pharmaceutical, Inc. ("OMP"), now known as Ortho-McNeil-Janssen Pharmaceuticals, Inc. ("OMJPI"), removes to this Court the state court action described below, based on diversity of citizenship, pursuant to 28 U.S.C. §1332. As detailed here, the Court should disregard the citizenship of defendant McKesson Corporation ("McKesson") because plaintiffs fraudulently joined that defendant.

## BACKGROUND

1. On November 8, 2007, the Southern California law firms of Khorrami, Pollard & Abir, LLP and Kabateck Brown Kellner LLP, along with the Colorado law firm of Burg Simpson Eldredge Hersh Jardine PC, filed a Complaint in a personal injury action in the Superior Court of California, County of San Francisco, entitled *Theresa Clemonds, et al. v. Ortho-McNeil Pharmaceutical, Inc., McKesson Corp., and Does 1-500, inclusive*, Case Number CGC-07-469001. A copy of the Complaint in that San Francisco County state court action (the "Complaint") is attached as Exhibit A to the accompanying Declaration of Brenda N. Buonaiuto ("Buonaiuto Dec.").

The seven individual plaintiffs in the action include residents of six states, who seek damages for "potentially fatal side effects" they allegedly suffered from using the Ortho Evra® contraceptive patch, available only by prescription and manufactured by OMP, now known as OMJPI. (Complaint ¶¶ 1, 10-16.) Only two of the seven plaintiffs reside in California, and they do not reside in San Francisco County, where this action was filed. (Complaint ¶¶ 10-16.) Plaintiffs' claims have nothing in common, other than that they all allege to have used Ortho Evra®. (*See* Complaint.) Plaintiffs allege causes of action for Negligence, Strict Liability Failure to Warn, Breach of Express Warranty, Breach of Implied Warranty, Negligent Misrepresentation, and Fraud against OMP, a Delaware corporation with its principal place of business in New Jersey, now known as OMJPI, a Pennsylvania corporation with its principal place of business also in New Jersey. (Complaint ¶ 17; Buonaiuto Dec. ¶ 3.) Although devoid of any factual allegations against McKesson, plaintiffs' complaint asserts those same claims against McKesson, a Delaware corporation with its principal place of business in San Francisco, California, whom plaintiffs allege "distributed and sold Ortho Evra in and throughout the State of California." (Complaint ¶ 3; Declaration of Greg Yonko, filed in *Abel, Theresa, et al. v. Ortho-McNeil Pharmaceutical, Inc., et al.*, USDC ND CA Case No. C 06 7551 SBA ("Yonko Dec."), attached to the Buonaiuto Dec. as Exhibit B, ¶ 2.)



## BASIS FOR JURISDICTION

2. Basis for Jurisdiction in this Court. This Court has original jurisdiction over this action, and OMP, now known as OMJPI, may properly remove to this Court, because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and there is diversity of citizenship of all named parties not fraudulently joined. 28 U.S.C. §§ 1332, 1441(a).

a. Amount in Controversy. Pursuant to California Code of Civil Procedure Section 425.10(b), the amount of damages sought by plaintiffs is not stated in the Complaint. However, the seven plaintiffs claim that they have *each* “suffered and/or may continue to suffer potentially fatal side effects such as strokes, pulmonary emboli, blood clots, deep vein thrombosis, and heart attacks” from using Ortho Evra®. (Complaint ¶ 1; *see also* ¶ 55, alleging that plaintiffs have suffered “diminished enjoyment of life, strokes, pulmonary emboli, blood clots, deep vein thrombosis, and heart attacks, as well as other severe permanent health problems.”) Plaintiffs further allege that OMP, now known as OMJPI, engaged in “fraudulent” and “reckless” conduct, giving rise to punitive damages claims. (*See e.g.* Complaint ¶¶ 57D, 71, 81, 95, 109.)

Given the nature of plaintiffs’ claims, and a review of damages awards and settlement amounts in this judicial district, in cases involving allegations of serious injuries from the use of prescription drugs or medical devices, it is reasonably believed that, if plaintiffs succeeded in proving the allegations of the Complaint, they would each recover a minimum of \$75,000 in damages. (Buonaiuto Dec. ¶ 11.) Indeed, plaintiffs claiming substantially similar injuries in the Ortho Evra® MDL have specifically alleged that the amount in controversy in their respective actions exceeds \$75,000, exclusive of interest and costs. (*Id.*)

It is therefore “facially apparent” from the nature of the claims alleged and the types of damages sought that the amount in controversy as to each plaintiff in this action exceeds \$75,000, exclusive of interest and costs. *See White v. FCI USA, Inc.*, 319 F.3d 672, 674 (5<sup>th</sup> Cir. 2003) (it was “facially apparent” that claim exceeded \$75,000 based on

plaintiff's "lengthy list of compensatory and punitive damages"); *see also In re Rezulin Products Liability Litigation*, 133 F.Supp.2d 272, 296 (S.D.N.Y. 2001) (concluding that complaint "obviously asserts a claim exceeding \$75,000" where plaintiff seeks "compensatory and punitive damages" for alleged "serious and life-threatening medical conditions" due to use of prescription medicine); *International Padi, Inc. v. Diverlink*, 2005 WL 1635347, \*1 (9<sup>th</sup> Cir. Cal. 2005) (court considered plaintiffs' general allegations of unspecified general and special damages "reasonably believed to be in excess of the jurisdictional limits" of the trial court and their request for injunctive relief to "easily conclude" that the \$75,000 amount in controversy requirement was met).

b. Citizenship of the Parties. There is complete diversity of citizenship between those parties not fraudulently joined. As alleged in the Complaint, plaintiffs are citizens variously of Alabama, California, Missouri, New York, Texas, and Virginia. (Complaint ¶¶ 10-16.) At the time the state court action was filed, OMP was a corporation existing under the laws of the State of Delaware, with its principal place of business in New Jersey, and is now known as OMJPI, a corporation existing under the laws of the State of Pennsylvania, with its principal place of business also in New Jersey. (Buonaiuto Dec. ¶ 3.) Therefore, diversity of citizenship exists between those plaintiffs not fraudulently joined and OMP, now known as OMJPI, pursuant to 28 U.S.C. Section 1332.

c. Plaintiffs Fraudulently Joined McKesson. The only other named defendant in this action, McKesson, is a Delaware corporation with its principal place of business in San Francisco, California. (Yonko Dec. ¶ 2.) McKesson has no potential liability to plaintiffs or to any of them. Rather, plaintiffs named McKesson as a "sham" defendant in an effort to destroy diversity and to prevent this case from being removed to federal court and then transferred to the Ortho Evra® MDL, which is pending in the Northern District of Ohio. (Buonaiuto Dec. ¶ 6.)

A defendant is fraudulently joined if "the plaintiff fails to state a cause of action against the defendant, and the failure is obvious according to the settled rules of the

state." *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9<sup>th</sup> Cir. 2001) (where non-diverse defendant is fraudulently joined, there is an exception to the requirement of complete diversity); *Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313, 1318 (9<sup>th</sup> Cir. 1998) ("fraudulently joined defendants will not defeat removal on diversity grounds"). "When determining whether a defendant is fraudulently joined, "[t]he court may pierce the pleadings, consider the entire record, and determine the basis of joinder by any means available.'" *Maffei v. Allstate California Ins. Co.*, 412 F.Supp.2d 1049 (E.D.Cal. 2006), citing *Lewis v. Time, Inc.*, 83 F.R.D. 455 (E.D.Cal. 1979) ("it is well settled that upon allegations of fraudulent joinder ... federal courts may look beyond the pleadings to determine if the joinder ... is a sham or fraudulent device to prevent removal"). If revealed that the joinder is fraudulent, the Court may dismiss the sham defendant. *Maffei, supra*. McKesson is so fraudulently joined here.

McKesson is fraudulently joined because plaintiffs have not made any material allegations against it. See e.g. *Brown v. Allstate Insurance*, 17 F.Supp.2d 1134, 1137 (S.D.Cal. 1998) (finding in-state defendants fraudulently joined where "no material allegations" against those defendants were made). Here, as demonstrated by the Complaint, plaintiffs' claims are substantively directed against the manufacturer of Ortho Evra® – OMP, now known as OMJPI, and not at McKesson. Indeed, none of plaintiffs' factual allegations, on which all of their causes of action are based, involve McKesson. (See "General Allegations" at Complaint ¶¶ 30-45.) Specifically, plaintiffs claim that: OMP obtained FDA approval of Ortho Evra®, despite concerns about its safety; OMP failed to appropriately warn users and prescribing health care providers of the alleged serious risks of using Ortho Evra®; OMP failed to properly or adequately investigate safety concerns about Ortho Evra®; OMP's conduct fell below the duty of care that it allegedly owed to plaintiffs; OMP misrepresented the known risks associated with Ortho Evra®; OMP negligently and recklessly failed to inform the public and prescribing health care providers of the alleged risks of using Ortho Evra®; and OMP was careless and negligent in its manufacturing, testing, selling, distributing, merchandising, advertising,



1 promoting, packaging, and marketing of Ortho Evra®.<sup>1</sup> (*Id.*) Those allegations have  
 2 everything to do with the claimed acts and omissions of OMP, now known as OMJPI,  
 3 and nothing to do with McKesson.

4 The only factual allegations that do relate to McKesson fail to state a claim against  
 5 that defendant. Plaintiffs allege that McKesson “distributed and sold Ortho Evra in and  
 6 throughout the State of California,” and that McKesson “packaged, distributed, supplied,  
 7 sold, placed into the stream of commerce, labeled, described, marketed, advertised,  
 8 promoted and purported to warn or to inform users regarding the risks pertaining to, and  
 9 assuaged concerns about the pharmaceutical Ortho Evra.” (Complaint ¶¶ 3, 25.) Notably  
 10 absent is any allegation that the plaintiffs or any of them fall within the general class of  
 11 “users” referenced by plaintiffs’ conclusory allegations. Even more telling, plaintiffs do  
 12 not allege that McKesson distributed or sold Ortho Evra® to any of the seven of them –  
 13 only two of whom even live in the State of California – or to any of their respective  
 14 health care providers or pharmacists, much less to all of them. (*See* Complaint.) Further,  
 15 the Complaint lacks any allegation that McKesson sold or distributed Ortho Evra®  
 16 outside the State of California, where the majority of the seven plaintiffs reside. The  
 17 absence of such allegations compels the conclusion that plaintiffs fraudulently joined  
 18 McKesson in an attempt to defeat diversity jurisdiction. *See e.g. Lyons v. American*  
 19 *Tobacco Co.*, 1997 WL 809677 at \*5 (S.D. Ala. 1997) (holding that there is “no better  
 20 admission of fraudulent joinder” than the failure of plaintiff “to set forth any specific  
 21 factual allegations” against the non-diverse defendant). Plaintiffs cannot cure this  
 22 deficiency by relying on allegations directed toward “Defendants” generally or toward  
 23 OMP. *See In re PPA Products Liability Litigation*, MDL No. 1407, Docket No. C02-  
 24 423R (W.D. Wash. Nov, 27, 2002), Slip Op. at 5 (attached as Ex. C to Buonaiuto Dec.)  
 25 (allegations directed toward “defendants” or “all defendants” insufficient).

26  
 27  
 28 <sup>1</sup> As detailed in its Answer, filed simultaneously with this Removal, OMP, now known as OMJPI,  
 denies plaintiffs’ allegations and denies that it is liable to plaintiffs in any manner or sum whatsoever.

1 In short, plaintiffs fail to allege that they received Ortho Evra® sold or distributed  
 2 by McKesson, a prerequisite to their product liability claims. It is essential that a plaintiff  
 3 who claims that a product distributed by defendant was defective must prove that  
 4 defendant was the distributor. *Garcia v. Joseph Vince Co.*, 84 Cal.App.3d 868, 874  
 5 (1978) (“Regardless of the theory which liability is predicated upon ... it is obvious that to  
 6 hold a producer, manufacturer, or seller liable for injury caused by a particular product,  
 7 there must first be proof that the defendant produced, manufactured, sold, or was in some  
 8 way responsible for the product”). Notwithstanding, given that the crux of plaintiffs’  
 9 claims is an alleged failure to warn of the alleged risks of using Ortho Evra®, there is no  
 10 legal basis for the causes of action asserted against McKesson.

11 Under California law, McKesson bears no duty to warn. Rather, the “learned  
 12 intermediary doctrine” provides that the duty to warn of a drug’s risk runs from the  
 13 manufacturer to the physician, and then from the physician to the patient. *See Brown v.*  
 14 *Superio Court (Abbott Labs.)*, 44 Cal.3d 1049, 1061-62, n.9 (1988); *Carlin v. Superior*  
 15 *Court (Upjohn Co.)*, 13 Cal.4<sup>th</sup> 1104, 1116 (1996). The rationale of the learned  
 16 intermediary doctrine is that the physician is in the best position to determine whether a  
 17 patient should use a prescription drug, and imposing a duty to warn on others would  
 18 threaten to undermine reliance on the physician’s informed judgment. For this reason,  
 19 California courts have rejected imposing liability on distributors, including specifically  
 20 McKesson, for failure to warn of the risks of using a prescription drug. *See e.g. Barlow*  
 21 *v. Warner-Lambert Co.*, Case No. CV-03-1647-R(RZx), Slip Op. at 2 (C.D.Cal. April 28,  
 22 2003) (attached as Ex. D to the Buonaiuto Dec.) (“the Court finds that there is no  
 23 possibility that plaintiffs could prove a cause of action against McKesson, an entity which  
 24 distributed [the prescription medication at issue] to pharmacists in California;” motion to  
 25 remand denied); and *Skinner v. Warner-Lambert Co.*, Case No. CV-03-1643-R(RZx),  
 26 Slip Op. at 2 (C.D.Cal. April 28, 2003) (attached as Ex. E to Buonaiuto Dec.) (same).

27 Further, McKesson had no involvement in the development or preparation of the  
 28 prescribing information for Ortho Evra® and did not have any responsibility for the



1 content of other written warnings concerning Ortho Evra®. (Yonko Dec. ¶ 5.) At no  
 2 time has McKesson had any involvement with the manufacture, development, testing,  
 3 packaging, labeling, advertising, promotion, or marketing of Ortho Evra®. (*Id.* ¶¶ 6-7.)

4 It is therefore a mystery why McKesson is named in this case, other than as a  
 5 “sham” defendant to destroy diversity jurisdiction and to prevent OMP, now known as  
 6 OMJPI, from removing the action to federal court and then transferring it to the Ortho  
 7 Evra® MDL. Courts have consistently ruled that such collusive tactics are not to be  
 8 recognized. *See e.g. Attorneys Trust v. Videotape Computer Products, Inc.*, 93 F.3d 593  
 9 (9<sup>th</sup> Cir. 1996) (noting there is no more reason for federal courts to countenance  
 10 destruction of jurisdiction by the use of straw parties than there is for them to  
 11 countenance the creation of jurisdiction in that manner). The Court should therefore  
 12 disregard the citizenship of McKesson in determining whether the requisite diversity  
 13 exists.

14 d. Citizenship of Doe Defendants. Pursuant to 28 U.S.C. Section  
 15 1441(a), for purposes of removal, the citizenship of defendants Does 1-500 must be  
 16 disregarded because plaintiffs sued those defendants under fictitious names.

### 17 REMOVAL TIMELY FILED

18 3. Service was made on the registered agent for service of process of OMP,  
 19 now known as OMJPI, on February 14, 2008. (Buonaiuto Dec. ¶ 3.) McKesson was  
 20 served, via its registered agent, on February 19, 2008. (Buonaiuto Dec. ¶ 4.) Therefore,  
 21 this Removal was timely filed within 30 days of service, pursuant to 28 U.S.C. § 1446(b).

### 22 CONSENT TO REMOVAL

23 4. The only other named defendant, McKesson, was fraudulently joined, and  
 24 its consent is therefore not required for removal; notwithstanding, McKesson consents to  
 25 the removal by OMP, now known as OMJPI, of this action to this Court. (Buonaiuto  
 26 Dec. ¶ 4.)

### 27 STATE COURT WITHIN THE COURT’S JURISDICTION

28 5. The San Francisco County, California Superior Court, from which OMP,

1 now known as OMJPI, removes this action, is within this Court's jurisdiction.

2 **STATE COURT PLEADINGS**

3 6. Copies of the state court pleadings known to OMP, now known as OMJPI,  
4 to have been filed in this action are collectively attached to the Buonaiuto Dec. as Exhibit  
5 A.

6 **FILING AND SERVICE OF NOTICE OF REMOVAL AND REMOVAL**

7 7. OMP, now known as OMJPI, will file a notice of the filing of this Notice of  
8 Removal and Removal in the San Francisco County Superior Court and will serve  
9 plaintiffs' counsel with a copy. (Buonaiuto Dec. ¶ 5.)

10 WHEREFORE, OMP, now known as OMJPI, hereby removes to this Court San  
11 Francisco County Superior Court Case No. CGC-07-469001.

12  
13 Dated: February 26, 2008

DRINKER BIDDLE & REATH

14 

15 CHARLES F. PREUSS

16 BRENDA N. BUONAIUTO

Attorneys for Defendants

17 ORTHO-MCNEIL PHARMACEUTICAL,  
18 INC., now known as ORTHO-MCNEIL-  
19 JANSSEN PHARMACEUTICALS, INC.,  
and MCKESSON CORPORATION